

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JENNIFER M TRASP
5435 D AVE NW
CEDAR RAPIDS IA 52405

UNITED STATES CELLULAR CORP
c/o TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03262-DWT
OC 02/15/04 R 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's March 11, 2004 decision (reference 01) that concluded Jennifer M. Trasp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2004. The claimant participated in the hearing. Shelly Lawless and Jennifer Robinson appeared on employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 20, 2000. She worked as a full-time customer service specialist. During her employment, the claimant received copies of the employer's Internet policy. As recently as March 2003, the claimant received information that the employer allowed employees to use the employer's Internet and email systems at work as long as this was done on an employee's break, the employee used the Internet system for appropriate reasons and did not use it excessively.

On January 27, 2004, at least three management employees observed the claimant using the employer's Internet for personal reasons when she was supposed to be working. The employer talked to the claimant about using the Internet at times when she was not on a break. The claimant indicated she did not realize she could not use the Internet at any time. The claimant noticed other employees using the Internet at times when they were not on a break. On January 27, 2004, the employer warned the claimant she could receive a final written warning for violating the employer's Internet policy.

After reviewing the claimant's personnel file and finding proof she had previously received copies of the employer's Internet policy, the employer decided the claimant would receive a final written warning. The employer told the claimant she would receive this warning and her job was in jeopardy if she continued to violate the employer's Internet policy. The employer then asked for an Internet usage report for the claimant's login and password. Robinson did not see the report until February 13, 2004. The report indicated the claimant continued to use Internet at work during non-break times. The employer concluded the claimant was on the Internet one to two hours a days and only about ten percent of this time was for work-related purposes.

Between January 28 and February 18, 2004, co-workers reported seeing the claimant on the Internet at work during times she was not on a break. Between February 13 and 18, the employer talked to the claimant about the results of the Internet usage report. The claimant denied she violated the employer's Internet policy anytime after January 28, 2004. The claimant asserted other people had used her computer, used her login and password, which then the Internet useable report for the claimant's login and password. The employer discharged the claimant on March 18, 2004 for violating the employer's Internet policy.

The claimant established a claim for benefits during the week of February 15, 2004. She filed claims for the weeks ending February 28 and March 6, 2004. She received her maximum weekly benefit amount of \$300.00 each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known her job was in jeopardy when the employer talked to her on January 27, 2004 about violating the employer's Internet usage policy. The employer warned the claimant that if she continued to abuse the Internet by using it during non-break times, she could be discharged.

The claimant's initial assertion she only used the Internet during her breaks was not accurate. During her testimony, the claimant ultimately agreed she used the Internet for personal reasons after January 27 during time she was not on break. A preponderance of the evidence establishes the claimant used the employer's Internet for personal reasons at times she was not on a break. The claimant violated the employer's Internet policy even after she was warned on

January 27, 2004. The employer discharged the claimant for work-connected misconduct. As of February 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 28 and March 6, 2004. She has been overpaid \$600.00 in benefits she received for these weeks.

DECISION:

The representative's March 11, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 28 and March 6, 2004. She has been overpaid \$600.00 in benefits she received for these weeks.

dlw/